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100TH CONGRESS
2d Session

SENATE

REPORT
100-486

UNIFORM REGULATORY JURISDICTION ACT OF 1988

AUGUST 11 (legislative day, AUGUST 10, 1988.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 2884]

The Committee on Energy and Natural Resources to which was referred the act (H.R. 2884) to assure uniformity in the exercise of regulatory jurisdiction pertaining to the transportation of natural gas and to clarify that the local transportation of natural gas by a distribution company is a matter within State jurisdiction and subject to regulation by State commissions, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the act, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Uniform Regulatory Jurisdiction Act of 1988".

SEC. 2. JURISDICTION OVER TRANSPORTATION OF NATURAL GAS.

Section 7 of the natural Gas Act (15 U.S.C. 717f) is amended—

(a) By redesignating section "7(f)" as section "7(f)(1)";

(b) By striking the period at the end thereof and inserting "; and"; and

(c) By adding a new section 7(f)(2) to read as follows:

"(2) If the Commission has determined a service area pursuant to this subsection, transportation to ultimate consumers in such service area by the holder of such service area determination, even if across State lines, shall be subject to the exclusive jurisdiction of the State commission in the State in which the gas is consumed. This section shall not apply to the transportation of natural gas to another natural gas company.".

SEC. 3. EFFECTIVE DATE.

The provisions of this Act shall become effective one hundred twenty days after the date of enactment.

S 313-44

Purpose of the Measure

The purpose of H.R. 2884 is to clarify that transportation of natural gas to consumers through companies subject to 7(f) of the Natural Gas Act is a matter within state jurisdiction and subject to regulation by state regulatory commissions.

Background and Need

The Natural Gas Act requires the Federal Energy Regulatory Commission ("FERC") to regulate natural gas companies that provide service in interstate commerce. Companies that sell gas and provide appurtenant service to retail customers are local distribution companies, and generally are regulated by individual state public utility commissions.

In a handful of instances, there are local distribution companies that have customers in services areas that straddle state lines. Because that provide service in more than one state, they ordinarily would be regulated by FERC. However, section 7(f) of the Natural Gas Act allows FERC to make a determination that such a company is performing a local distribution function. If it makes such a determination, the natural gas company may "enlarge or extend its facilities" in that service area for the purpose of supplying increased market demands in the service area without further authorization by FERC. Washington Gas Light Company, which serves the D.C. metropolitan area, is an example of a 7(f) company.

At the persent time, there are eight natural gas companies that hold service area designations pursuant to section 7(f) of the Natural Gas Act. They are Washington Gas Light Co., Washington, DC; Blacksville Oil and Gas Co., Lumberport, West Virginia; Great River Gas Co., Keokuk, Iowa; Shenandoah Gas Co., Winchester, Virginia; Arkansas Oklahoma Gas Corp., Fort Smith, Arkansas; Iowa-Illinois Gas and Electric Co., Davenport, Iowa; High Plains Natural Gas Co., Canadian, Texas; and Associated Natural Gas Co., Blytheville, Arkansas.

In 1942, when section 7(f) was added to the Natural Gas Act, local distribution companies and interstate pipelines undertook sales and transportation as part of the same "bundled" service. With the advent of FERC's recent policy to promote open access transportation, promulgated in Order Nos. 436/500, sales and transportation services could be "unbundled" if the pipeline met certain requirements, including providing non-discriminatory transportation of customer-owned gas.

Local distribution companies who elect to provide transportation for their customers' gas would generally seek rate approval from their state commissions. But FERC determined in a *Washington Gas Light* decision in 1987 (*Washington Gas Light Co.,* 40 FERC 61,361 (1987)) that section 7(f) companies had to apply to FERC for transportation rates because the statute only addressed the delegation of facilities construction authority to the state commissions, and not transportation in interstate commerce.

In the case of Washington Gas Light, a D.C. hospital group argued to FERC that FERC should grant uniform transportation rates for customer-owned gas through Washington Gas Light's facilities in Maryland, Virginia and the District. Washington Gas

Light argued that the state commissions should set rates, because the transportation function was retail, and therefore of local concern similar to section 7(f) construction. FERC stated that it was constrained to retain jurisdiction under the Natural Gas Act because section 7(f) did not apply to transportation.

The result of FERC's decision and interpretation of the statute is that those 7(f) companies who wish to provide transportation service to customers are subject to regulation by both their state utility commissions, and by FERC.

Legislative History

H.R. 2884 was introduced on July 1, 1987. It was amended and reported from the Subcommittee on Energy and Power on March 8, 1988, and from the Committee on Energy and Commerce on May 18, 1988. It was amended further and passed the House on June 13, 1988 by voice vote. It was referred to the Committee on June 14, 1988, and referred to the Subcommittee on Energy Regulation and Conservation on June 20, 1988.

A companion bill, S. 1717, was introduced by Sen. Grassley on September 24, 1987. It was referred to the Committee and to the Subcommittee on Energy Regulation and Conservation. The cosponsors are Senators Harkin, Rockefeller and Trible. A hearing was held on June 14, 1988.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on August 10, 1988, unanimous voice vote of a quorum, present recommends that the Senate pass H.R. 2884 as amended, as described herein.

Committee Amendments

The Committee adopted an amendment in the nature of a substitute for the bill passed by the House of Representatives.

The Committee amendment redesignates the existing section 7(f) of the Natural Gas Act as section 7(f)(1). The provisions of this Act do not affect State jurisdiction over existing or new facilities constructed in the 7(f)(1) service area. It then adds a new section 7(f)(2). The new section will apply in instances in which FERC makes a service area determination pursuant to section 7(f)(1). In those instances, transportation of natural gas to ultimate consumers in such service area by the holder of such service area determination shall be subject to the exclusive jurisdiction of the State commission in the State in which the gas is consumed. The section shall apply even if the transportation is across State lines. The phrase "transportation of natural gas to ultimate consumers" is intended to encompass transportation for all types of end users, whether the natural gas goes to residential, commercial, or industrial customers. However, the section shall not apply to the transportation of natural gas to another "natural gas company" as defined in the Natural Gas Act. That transportation will continue to be subject to FERC regulation.

The provisions of this Act shall become effective 120 days after the date of enactment.

The Committee encourages all natural gas companies who perform activities of a local distribution nature in service areas which cross state lines to see a section 7(f)(1) service area determination. Once granted, the retail transportation of natural gas by the holder of the service area determination will be subject to state regulation in the state in which the gas is consumed, rather than federal regulation. The legislation will avoid costly, duplicative, and administratively burdensome regulation at both the federal and state levels which is required by the existing law.

Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, August 10, 1988.

Hon. J. Bennett Johnston, Jr.,
Chairman, Committee on Energy and Commerce,
U.S. Senate, Washington DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 2884, the Uniform Regulatory Jurisdiction Act of 1988, as amended and ordered reported by the Senate Committee on Energy and Natural Resources, August 10, 1988.

This act would amend section 7 of the Natural Gas Act to change the regulatory jurisdiction for some of the natural gas transportation companies regulated under this section. Currently the Federal Energy Regulatoy Commission regulates the rates these companies can charge. Under H.R. 2884, as amended, the state utility commission in the state where the gas is consumed would have authority over the rates charged by these companies, except in cases where gas is transported to another natural gas company.

CBO estimates that this bill would result in no significant impact on the budgets of federal, state or local governments. Few companies are regulated under section 7(f) of the Natural Gas Act, and a change in their regulatory jurisdiction would not change federal or state workloads appreciably.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kim Cawley, who can be reached at 226-2860.

Sincerely,

James L. Blum, *Acting Director.*

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of the Rule XXVI of the standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 2884, as amended by the Committee. The bill will significantly lessen the regulatory burden presently imposed on companies that are subject to section 7(f) of the Natural Gas Act by making transportation of natural gas by those companies subject to

state regulation, rather than to both state and Federal regulation as is the case under existing law.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Less paperwork would result from the enactment of H.R. 2884, as reported.

EXECUTIVE COMMUNICATIONS

The Committee requested views on the companion bill, S. 1717, from FERC and the Office of Management and Budget ("OBM") on May 20, 1988. OMB did not reply. FERC did not take a position on the legislation. Instead, the Chairman submitted a staff analysis of S. 1717. It is set forth below:

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426

CHAIRMAN

June 13, 1988

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
JUN 14 1988
WASHINGTON, D.C. 20510

OFFICIAL COMMITTEE FILE
PLEASE RETURN

Dear Chairman Johnston:

Thank you for your letter of May 20, 1988, concerning S.1717, a bill to assure uniformity in the exercise of regulatory jurisdiction pertaining to the transportation of natural gas and to clarify that the local transportation of natural gas by a distribution company is a matter within State jurisdiction and subject to regulation by State commissioners, and for other purposes.

Pursuant to your request, I have enclosed 50 copies of the Commission staff's report on its analysis of the bill for use by the Senate Committee on Energy and Natural Resources.

I appreciate the opportunity to comment on S.1717. If I can be of further assistance on this matter please let me know.

Sincerely,

Martha

Martha O. Hesse

Enclosure

Honorable J. Bennett Johnston
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Enclosure

FEDERAL ENERGY REGULATORY COMMISSION
STAFF REPORT AND COMMENTS ON S.1717

Summary of Legislation

As proposed, the Uniform Regulatory Jurisdiction Act of 1987, S.1717, would allow two classes of persons to choose state, as opposed to federal, regulation of rates and charges for the transportation of natural gas in interstate commerce:

(1) those persons transporting natural gas in a service area determined by the Commission pursuant to section 7(f) of the Natural Gas Act (NGA); and

(2) those persons transporting natural gas solely on a retail basis utilizing a gas pipeline, the Commission certificated portion of which was less than 30 miles long as of December 31, 1960. The transportation rates would be regulated by the state in which the gas is consumed.

Section 7(f) Companies

The following natural gas companies hold service area designations pursuant to section 7(f) of the NGA:

COMPANY	CITATION TO COMMISSION ORDER
*Washington Gas Light Co.	28 FPC 753 (1962)
Blacksville Oil and Gas Co.	37 FPC 502 (1967)
Great River Gas Co.	14 FERC ¶ 61,167 (1981)
Shenandoah Gas Co.	16 FERC ¶ 61,087 (1981)
*Arkansas Oklahoma Gas Corp.	33 FERC ¶ 61,197 (1985)
*Iowa-Illinois Gas and Electric Co.	39 FERC ¶ 61,016 (1987)
High Plains Natural Gas Co.	41 FERC ¶ 61,364 (1987)
*Associated Natural Gas Co.	43 FERC ¶ 61,304 (1988)

Each of the companies listed above sells gas at retail in its service area. In each case, the company acts primarily as a local distributor in an area which happens to straddle a state line. In each case, the company makes no sales for resale and the gas received in each service area is ultimately consumed within that service area. In each case the retail sales rates and services within the service area are subject to state regulation. In each case, the company is subject to Commission jurisdiction only because its system physically crosses state lines.

The asterisks denote those companies that are currently providing transportation to end users in their service areas pursuant to blanket transportation certificates issued by the

Commission. (In addition, Shenandoah Gas Company has filed an application for such certificate in Docket No. CP88-278-000, pending before the Commission.) Therefore, any of those 7(f) companies now providing transportation services, or any other 7(f) companies that receive such transportation authority from the Commission in the future, may elect to be subject to rate regulation in the state where the gas is consumed if S.1717 is enacted as proposed. S.1717 apparently is not intended to expand the availability of section 7(f) service area designations beyond the physical and geographic configurations which have already received such designations.

Typically, those companies holding blanket certificates transport gas to retail customers in their respective service areas on behalf of interstate pipelines selling or transporting the gas to those retail customers. Those 7(f) companies also have the authority to transport gas through their service areas on behalf of interstate or intrastate pipelines for ultimate consumption outside the service area to the extent that geography, markets, and contractual agreements combine to make such transportation beneficial to the parties.

Other Affected Companies

The only company apparently affected by Section 2(2) of S.1717 is Interstate Power Company, a gas and electric utility company operating in Iowa, Minnesota and Illinois. In a declaratory order issued July 24, 1986 (Interstate Power Company, 36 FERC ¶ 61,127), the Commission found that even though Interstate Power functions primarily as a local distribution company, a transportation arrangement with Hawkeye Chemical Company was in interstate commerce, and thus subject to the Commission's jurisdiction under the NGA. The proposed law would allow Interstate Power to choose state regulation of its transportation rates and charges. The transportation itself, to the extent that it is interstate transportation, would remain subject to Commission jurisdiction.

Comments

The NGA establishes a comprehensive and complementary scheme for the regulation of natural gas services and rates between the Commission and the various state regulatory agencies. Under section 1(b) of the NGA, the Commission's jurisdiction extends to "the transportation of natural gas in interstate commerce of natural gas for resale ... and to natural gas companies engaged in such transportation or sale...." The state regulatory commissions have jurisdiction over "any other transportation or sale of natural gas" and over "the local distribution of natural gas [and] the facilities used for much distribution...."

The section 7(f) determination is simply a procedure whereby a company acting essentially as a local distribution company may modify or enlarge its facilities subject to the Commission's jurisdiction without the necessity of seeking individual authorizations for each change of facilities. Because the Commission does not regulate the rates for retail sales by natural gas companies (see, e.g., F.P.C. v Louisiana Power & Light Co. 406 U.S. 621 (1972)), the practical effect of section 7(f) is to exempt from federal regulation companies that distribute gas in more that one state. Nevertheless, section 7(f) only refers to construction activities. It does not affect the Commission's responsibility to regulate transportation in interstate commerce. Thus, where a 7(f) company has sought to provide transportation of customer-owned gas, the Commission has found that it is subject to the same regulations that apply to transportation by any interstate pipeline. E.g. Washington Gas Light Company 39 FERC ¶ 61, 119 (1987), rehearing granted in part and denied in part, 40 FERC ¶ 61, 361 (1987).

As a result, some of the companies with a 7(f) designation have also applied for and received from the Commission blanket transportation authority to transport customer-owned gas within the 7(f) service area. In recognition of the special circumstances of these companies, the Commission has granted waivers of various requirements under Part 284 of its regulations to allow these companies to operate under the less burdensome rates applicable to local distribution companies that wish to perform certain limited jurisdictional transportation. E.g. Iowa Illinois Gas and Electric Co., 39 FERC ¶ 61,016 (1987). These regulations allow a local distribution company that receives a blanket certificate under section 284.224 to choose among several rate options, subject to Commission approval. Specifically, the company may choose to base its rates on the same methodology used in designing its state-approved rates, or it may seek Commission approval of rates for specific transactions. 18 C.F. R. § 284.224 (d)(2).

S.1717 would allow section 7(f) companies to choose to be subject to state rate regulation without Commission approval. Apparently, however, S.1717 as currently drafted would not change the Commission's jurisdiction over the interstate transportation of natural gas. Thus, even if a company chose to have its rate regulated by a state, it would still need authorization from the Commission to provide transportation of the gas in the first place. Under the Natural Gas Act the Commission has authority to prescribe conditions applicable to interstate transportation and to remedy any unduly discriminatory practices. Presumably, the Commission would retain this authority over companies subject to S.1717.

There are several areas where the bill, as drafted, may be subject to inconsistent interpretations. Section 2 provides that the rate for transportation in a 7(f) service area may be regulated by the state in which the gas is consumed, at the election of the 7(f) company. However, a company operating under section 7(f) might transport gas in its service area to an interstate pipeline for subsequent transportation and consumption outside of the 7(f) service area. Under these circumstances, rates for transportation of gas ultimately consumed outside the states containing the service area would be set by the state in which the gas is consumed. This could be cured by clarifying that the bill applies only to transportation of gas that is consumed within the service area. Alternatively, the language could be changed to provide that transportation rates would be set by the states in which the 7(f) company's facilities are located.

The reference to gas that is transported "solely on a retail basis" may also be susceptible to more than one interpretation. The concept of "retail sales" is familiar to those who are involved in pipeline regulations, but transportation is not commonly referred to as "retail". The phrase seems to refer to gas that is (1) owned by the end user and not by the transporter and (2) transported for consumption by that end user and not for resale. Some clarification of this point may be worthwhile.

Finally, the proposed legislation would not affect the applicability of Federal environmental laws to affected companies or their service areas.

CHANGES IN EXISTING LAW

In compliance with paragaph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act, H.R. 2884, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

NATURAL GAS ACT

An Act to regulate the transportation and sale of natural gas in interstate commerce, and for other purposes

* * * * * * *

EXTENION OF FACILITIES; ABANDONMENT OF SERVICE

Sec. 7. (a) * * *

* * * * * * *

(f) *(1)* The Commission, after a hearing had upon its own motion or upon application, may determine the service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization [.]; and

(2) If the Commission has determined a service area pursuant to this subsection, transportation to ultimate consumers in such service area by the holder of such service area detemination, even if across State lines, shall be subject to the exclusive jurisdiction of the State commission in the State in which the gas is consumed. This section shall not apply to the transportation of natural gas to another natural gas company.

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